

FINAL VERDICT FORM

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE CUSTOMS AND TAX ADMINISTRATION OF THE  
KINGDOM OF DENMARK (SKATTEFORVALTNINGEN)  
TAX REFUND SCHEME LITIGATION

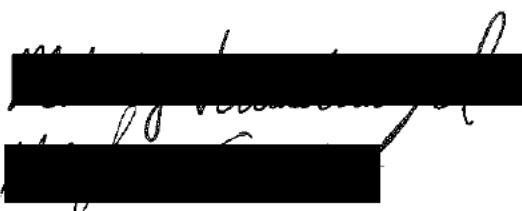
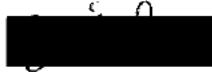
This document relates to case nos.: 19-cv-01785;  
19-cv-01867; 19-cv-01893; 19-cv-01781; 19-cv-01783;  
19-cv-01866; 19-cv-01895; 19-cv-01794; 19-cv-01865;  
19-cv-01904; 19-cv-01798; 19-cv-01869; 19-cv-01922;  
19-cv-01800; 19-cv-01788; 19-cv-01870; 19-cv-01791;  
19-cv-01792; 19-cv-01928; 19-cv-01926; 19-cv-01868;  
19-cv-01929; 19-cv-01803; 19-cv-01806; 19-cv-01906;  
19-cv-01801; 19-cv-01894; 19-cv-01808; 19-cv-01810;  
19-cv-01809; 18-cv-04833; 19-cv-01911; 19-cv-01898;  
19-cv-01812; 19-cv-01896; 19-cv-01871; 19-cv-01813;  
19-cv-01930; 19-cv-01815; 19-cv-01818; 19-cv-01931;  
19-cv-01918; 19-cv-01873; 19-cv-01924; 19-cv-10713.

MASTER DOCKET

18-md-2865 (LAK)

**SPECIAL VERDICT FORM**

PLEASE Indicate your Verdict with a Check Mark (✓)



**PART ONE**

1     1. Did SKAT prove that, in issuing refund payments to the pension plans, SKAT justifiably relied on the  
2     false statements contained in the plans' reclaim applications?

3     (a)    **By Clear and Convincing Evidence:** Yes  No \_\_\_\_\_

4           *If you answered "Yes" to Question 1(a), skip Question 1(b) and proceed to Question 2.*

5           *If you answered "No" to Question 1(a), proceed to Question 1(b).*

6     (b)    **By a Preponderance of the Evidence:** Yes \_\_\_\_\_ No \_\_\_\_\_

7           *If you answered "Yes" to Question 1(b), proceed to Question 2.*

8           *If you answered "No" to Question 1(b), you will answer only the questions under*  
9           *Subsection D of Sections I, II, III, and IV. These are Questions 7-10 in Section I, Questions*  
10          *16-19 in Section II, Questions 25-28 in Section III, and Questions 34-37 in Section IV.*

11

## PART TWO

## **SECTION I. Richard Markowitz & Associated Plans**

### **Subsection A. Fraud Claims**

2. For the plans listed in Chart A, did SKAT prove that Richard Markowitz made or caused to be made the false statements in the reclaim applications to SKAT?

(a) **By Clear and Convincing Evidence:**

Yes as to all  Yes as to some  Yes as to none

If you answered "Yes as to all" for Question 2(a), skip Question 2(b) and proceed to Question 3. If you answered "Yes as to none" for Question 2(a), proceed to Question 2(b). If and only if you answered "Yes as to some" for Question 2(a), in Column 2(A) of Chart A, check the box to the right of the name of the plan or plans which you find SKAT proved that Richard Markowitz made or caused to be made the false statements to SKAT in the reclaim applications of the plan or plans. Then proceed to Question 2(b).

**(b) By a Preponderance of the Evidence:**

Yes as to all \_\_\_\_\_ Yes as to some \_\_\_\_\_ Yes as to none \_\_\_\_\_

If you answered "Yes as to all" or "Yes as to none" for Question 2(b), proceed to Question 3. If and only if you answered "Yes as to some" for Question 2(b), in Column 2(B) of Chart A, check the box to the right of the name of the plan or plans which you find SKAT proved that Richard Markowitz made or caused to be made the false statements to SKAT in the reclaim applications of the plan or plans. Then proceed to Question 3.

### Chart A

Markowitz Associated Plans	2(A)	2(B)
<i>Plans of which Markowitz was a beneficiary</i>		
Avanix Management LLC Roth 401K Plan		
Batavia Capital Pension Plan		
Cavus Systems LLC Roth 401(K) Plan		
Hadron Industries LLC Roth 401(K) Plan		
Michelle Investments Pension Plan		
Remece Investments LLC Pension Plan		
RJM Capital Pension Plan		
Routt Capital Pension Plan		
Xiphias LLC Pension Plan		
<i>“Friends and Family” Plans</i>		
Albedo Management LLC Roth 401(K) Plan		

Ballast Ventures LLC Roth 401(K) Plan		
Bareroot Capital Investments LLC Roth 401(K) Plan		
Cedar Hill Capital Investments LLC Roth 401(K) Plan		
Eclouge Industry LLC Roth 401(K) Plan		
Fairlie Investments LLC Roth 401(K)Plan		
First Ascent Worldwide LLC Roth 401(K) Plan		
Green Scale Management LLC Roth 401(K) Plan		
Keystone Technologies LLC Roth 401(K) Plan		
Loggerhead Services LLC Roth 401(K) Plan		
PAB Facilities Global LLC Roth 401(K) Plan		
Raubritter LLC Pension Plan		
Roadcraft Technologies LLC Roth 401(K) Plan		
Trailing Edge Productions LLC Roth 401(K) Plan		
2321 Capital Pension Plan		
Bowline Management Pension Plan		
California Catalog Company Pension Plan		
Clove Pension Plan		
Davin Investments Pension Plan		
Delvian LLC Pension Plan		
DFL Investments Pension Plan		
Laegeler Asset Management Pension Plan		
Lion Advisory Inc. Pension Plan		
Mill River Capital Management Pension Plan		
Next Level Pension Plan		
Rajan Investments LLC Pension Plan		
Spirit on the Water Pension Plan		
Tradén Investments Pension Plan		

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3

1 3. Did SKAT prove that Richard Markowitz knew, at the time the statements were made, that the  
2 statements in all the reclaim applications of the plans listed in Chart A were false or that he acted  
3 recklessly without regard to whether they were true or false?

4 (a) **By Clear and Convincing Evidence:** Yes  No \_\_\_\_\_

5 *If you answered "Yes" to all of Questions 1(a), 2(a) as to All Plans, and 3(a) (i.e., you  
6 found that SKAT proved by clear and convincing evidence that SKAT justifiably relied on  
7 the false statements, that Richard Markowitz made or caused to be made the false  
8 statements for all the listed plans in Chart A, and that Richard Markowitz, when the  
9 statements were made, knew that the statements were false or acted recklessly without  
10 regard to whether they were true or false), skip Questions 3(a)(i), 3(b), 4 and 5 (under  
11 Subsection B) and proceed to Question 6 (under Subsection C). If you answered "Yes" to  
12 3(a) but not all three of the questions mentioned, skip only Questions 3(a)(i) and 3(b) and  
13 proceed to Question 4.*

14 *If you answered "No" to Question 3(a), answer Question 3(a)(i), and then proceed to  
15 Question 3(b), regardless of your answer.*

16 (i) Did SKAT prove by clear and convincing evidence that Richard Markowitz knew  
17 the statements in the reclaim applications were false or acted recklessly without  
18 regard to whether they were true or false, at any time before the last reclaim  
19 applications were submitted? Yes \_\_\_\_\_ No \_\_\_\_\_

20 If you answered "Yes" to Question 3(a)(i), indicate the first month and year:  
21 \_\_\_\_\_

22 (b) **By a Preponderance of the Evidence:** Yes \_\_\_\_\_ No \_\_\_\_\_

23 *If you answered "Yes" to Question 3(b), proceed to Question 4.*

24 *If you answered "No" to Question 3(b), answer Question 3(b)(i), and then proceed to  
25 Question 4, regardless of your answer.*

26 (i) Did SKAT prove by a preponderance of the evidence that Richard Markowitz  
27 knew the statements in the reclaim applications were false or acted recklessly  
28 without regard to whether they were true or false, at any time before the last reclaim  
29 applications were submitted? Yes \_\_\_\_\_ No \_\_\_\_\_

30 If you answered "Yes" to Question 3(b)(i), indicate the first month and year:  
31 \_\_\_\_\_

32

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36

### **Subsection B. Aiding and Abetting Fraud Claims**

2 4. Did SKAT prove that Richard Markowitz knew or consciously avoided knowing, from the time the  
3 first reclaim applications were submitted, that the refund claims arranged by Sanjay Shah and Solo  
4 Capital were fraudulent?

5 (a) By Clear and Convincing Evidence: Yes \_\_\_\_\_ No \_\_\_\_\_

6                    If you answered "Yes" to Question 4(a), skip Questions 4(a)(i) and 4(b), and continue to  
7                    Question 5.

If you answered "No" to Question 4(a), answer Question 4(a)(i), and then proceed to Question 4(b), regardless of your answer.

10 (i) Did SKAT prove by clear and convincing evidence that Richard Markowitz knew  
11 or consciously avoided knowing, at any time before the final reclaim applications  
12 were submitted, that the refund claims arranged by Sanjay Shah and Solo Capital  
13 were fraudulent? Yes \_\_\_\_\_ No \_\_\_\_\_

If you answered “Yes” to Question 4(a)(i), indicate the earliest month and year:

16 (b) By a Preponderance of the Evidence: Yes \_\_\_\_\_ No \_\_\_\_\_

17      *If you answered "Yes" to Question 4(b), proceed to Question 5.*

If you answered "No" to Question 4(b), answer Question 4(b)(i).

19 (i) Did SKAT prove by a preponderance of the evidence that Richard Markowitz  
20 knew or consciously avoided knowing, at any time before the final reclaim  
21 applications were submitted, that the refund claims arranged by Sanjay Shah and  
22 Solo Capital were fraudulent? Yes No

23      *If you answered "No" to Question 4(b)(i), skip Question 5 and proceed to Question*  
24      *6. If you answered "Yes" to Question 4(b)(i), indicate the date below, and proceed*  
25      *to Question 5.*

26 If you answered "Yes" to Question 4(b)(i), indicate the earliest month and year:  
27

28 5. Did SKAT prove that Richard Markowitz provided substantial assistance in the submission of  
29 fraudulent reclaim applications?

30 (a) By Clear and Convincing Evidence: Yes No

If you answered "Yes" to Question 5(a), skip Question 5(b), and continue to Question 6. If you answered "No" to Question 5(a), proceed to Question 5(b).

33 (b) By a Preponderance of the Evidence: Yes No

34 *Regardless of your answer to Question 5(b), proceed to Question 6.*

1

**Subsection C. Negligent Misrepresentation Claims**

2 6. Did SKAT prove by a preponderance of the evidence that Richard Markowitz failed to use reasonable  
 3 care to ensure that the statements in every reclaim application of the plans listed in Chart A were  
 4 correct?

5 Yes  No \_\_\_\_\_

6 If you answered "Yes" to Question 6, proceed to Question 7.

7 If you answered "No" to Question 6, answer 6(a), and then proceed to Question 7.

8 (a) Did SKAT prove by a preponderance of the evidence that Richard Markowitz, after a  
 9 certain point in time, failed to use reasonable care to ensure that the statements in the  
 10 reclaim applications were correct? Yes \_\_\_\_\_ No \_\_\_\_\_

11 If you answered "Yes" to Question 6(a), indicate the earliest month and year:  
 12 \_\_\_\_\_

13

**Subsection D. Unjust Enrichment/Money Had & Received/Payment by Mistake Claims**

15 7. Did SKAT prove by a preponderance of the evidence that equity and good conscience do not permit  
 16 Richard Markowitz to retain the money he received from SKAT?

17 Yes  No \_\_\_\_\_

18 If you answered "Yes" to Question 7, proceed to Question 8. If you answered "No" to  
 19 Question 7, skip Question 8 and go to Question 9.

20 8. In what dollar amount do you find that Richard Markowitz was unjustly enriched?

21 \$ 38,221,035.60

22 Proceed to Question 9.

23 9. Did SKAT prove by a preponderance of the evidence that equity and good conscience do not permit  
 24 the plans of which Richard Markowitz was a beneficiary (listed in the chart below) to retain the money  
 25 they received from SKAT?

26 Yes  No \_\_\_\_\_

27 If you answered "Yes" to Question 9, proceed to Question 10. If you answered "No" to  
 28 Question 9, skip Question 10 and proceed to Question 11.

29 10. In what dollar amount do you find each of the plans of which Richard Markowitz was a beneficiary  
 30 (listed in the chart below) was unjustly enriched?

Pension Plans of which Richard Markowitz was a beneficiary	\$
Avanix Management LLC Roth 401K Plan	\$ <u>62,416,291</u>

Batavia Capital Pension Plan	\$1,761,351
Cavus Systems LLC Roth 401(K) Plan	\$ 986,510
Hadron Industries LLC Roth 401(K) Plan	\$ 973,627
Michelle Investments Pension Plan	\$ 4,035,308
Remece Investments LLC Pension Plan	\$ 3,154,895
RJM Capital Pension Plan	\$ 3,249,981
Routt Capital Pension Plan	\$ 2,466,627
Xiphias LLC Pension Plan	\$ 3,788,351

1  
2                   *Proceed to Question 11.*  
3

4                   **SECTION II.    Jocelyn Markowitz & Calypso Investments Pension Plan**

5                   **Subsection A. Fraud Claims**

6    11. Did SKAT prove that Jocelyn Markowitz made or caused to be made the false statements in the Calypso  
7    Investments Pension Plan's reclaim applications to SKAT?

8    (a)   **By Clear and Convincing Evidence:** Yes  No \_\_\_\_\_

9                   *If you answered "Yes" to Question 11(a), skip Question 11(b) and proceed to Question*  
10                   *12. If you answered "No" to Question 11(a), proceed to Question 11(b).*

11   (b)   **By a Preponderance of the Evidence:** Yes \_\_\_\_\_ No \_\_\_\_\_

12                   *Regardless of your answer to Question 11(b), proceed to Question 12.*

13   12. Did SKAT prove that Jocelyn Markowitz knew, at the time the statements were made, that the  
14   statements in all the reclaim applications of the Calypso Pension Plan were false or that she acted  
15   recklessly without regard to whether they were true or false?

16   (a)   **By Clear and Convincing Evidence:** Yes  No \_\_\_\_\_

17                   *If you answered "Yes" to Questions 1(a), 11(a), and 12(a) (i.e., you found that SKAT*  
18                   *proved by clear and convincing evidence that SKAT justifiably relied on the false*  
19                   *statements, that Jocelyn Markowitz made or caused to be made the false statements, and*  
20                   *that Jocelyn Markowitz knew the statements were false or acted recklessly without regard*  
21                   *to whether they were true or false), then skip Questions 12(a)(i), 12(b), 13, and 14 and*  
22                   *proceed to Question 15 (under Subsection C). If you answered "Yes" to Question 12(a)*  
23                   *but not all three of the questions mentioned, skip only Questions 12(a)(i) and 12(b), and*  
24                   *proceed to Question 13.*

25                   *If you answered "No" to Question 12(a), answer Question 12(a)(i), and then proceed to*  
26                   *12(b), regardless of your answer.*

(i) Did SKAT prove by clear and convincing evidence that Jocelyn Markowitz knew the statements in the reclaim applications were false or acted recklessly without regard to whether they were true or false, at any time before the last reclaim applications were submitted? Yes \_\_\_\_\_ No \_\_\_\_\_

If you answered "Yes" to Question 12(a)(i), indicate the first month and year:

(b) **By a Preponderance of the Evidence:** Yes  No

If you answered "Yes" to Question 12(b), proceed to Question 13.

If you answered "No" to Question 12(b), answer Question 12(b)(i), and then proceed to Question 13, regardless of your answer.

(i) Did SKAT prove by a preponderance of the evidence that Jocelyn Markowitz knew the statements in the reclaim applications were false or acted recklessly without regard to whether they were true or false, at any time before the last reclaim applications were submitted? Yes \_\_\_\_\_ No \_\_\_\_\_

If you answered “Yes” to Question 12(b)(i), indicate the first month and year:

### **Subsection B. Aiding and Abetting Fraud Claims**

19 13. Did SKAT prove that, from the time of the first reclaim applications, Jocelyn Markowitz knew or  
20 consciously avoided knowing that the refund claims arranged by Sanjay Shah and Solo Capital were  
21 fraudulent?

(a) By Clear and Convincing Evidence: Yes \_\_\_\_\_ No \_\_\_\_\_

If you answered "Yes" to Question 13(a), skip Questions 13(a)(i) and 13(b), and proceed to Question 14.

If you answered "No" to Question 13(a), answer Question 13(a)(i), and then proceed to Question 13(b), regardless of your answer.

(i) Did SKAT prove by clear and convincing evidence that Jocelyn Markowitz knew or consciously avoided knowing, at any time before the final reclaim applications were submitted, that the refund claims arranged by Sanjay Shah and Solo Capital were fraudulent? Yes \_\_\_\_\_ No \_\_\_\_\_

If you answered "Yes" to Question 13(a)(i), indicate the earliest month and year:

(b) **By a Preponderance of the Evidence:** Yes  No

If you answered "Yes" to Question 13(b), then proceed to Question 14.

If you answered "No" to Question 13(b), answer Question 13(b)(i).

(i) Did SKAT prove by a preponderance of the evidence that Jocelyn Markowitz knew or consciously avoided knowing, at any time before the final reclaim applications were submitted, that the refund claims arranged by Sanjay Shah and Solo Capital were fraudulent? Yes \_\_\_\_\_ No \_\_\_\_\_

If you answered "No" to Question 13(b)(i), skip Question 14 and proceed to Question 15. If you answered "Yes" to Question 13(b)(i), indicate the date below, and proceed to Question 14.

If you answered "Yes" to Question 13(b)(i), indicate the earliest month and year:

10 14. Did SKAT prove that Jocelyn Markowitz provided substantial assistance in the submission of  
11 fraudulent reclaim applications?

(a) **By Clear and Convincing Evidence:** Yes  No

If you answered "Yes" to Question 14(a), skip Question 14(b) and proceed to Question 15. If you answered "No" to Question 14(a), proceed to Question 14(b).

(b) **By a Preponderance of the Evidence:** Yes  No

*Regardless of your answer to Question 14(b), proceed to Question 15.*

### **Subsection C. Negligent Misrepresentation Claims**

19 15. Did SKAT prove by a preponderance of the evidence that Jocelyn Markowitz failed to use reasonable  
20 care to ensure that the statements in every reclaim application of Calypso Investments Pension Plan  
21 were correct?

Yes  No

*If you answered “Yes” to Question 15, proceed to Question 16.*

If you answered "No" to Question 15, answer 15(a), and then proceed to Question 16.

(a) Did SKAT prove by a preponderance of the evidence that Jocelyn Markowitz, after a certain point in time, failed to use reasonable care to ensure that the statements in the reclaim applications were correct? Yes \_\_\_\_\_ No \_\_\_\_\_

If you answered "Yes" to Question 15(a), indicate the earliest month and year:

30

31

32

33

1                   **Subsection D. Unjust Enrichment/Money Had & Received/Payment by Mistake Claims**2       16. Did SKAT prove by a preponderance of the evidence that equity and good conscience do not permit  
3       Jocelyn Markowitz to retain the money she received from SKAT?4                   Yes                    No \_\_\_\_\_5                   *If you answered "Yes" to Question 16, proceed to Question 17. If you answered "No" to  
6       Question 16, skip Question 17 and proceed to Question 18.*

7       17. In what dollar amount do you find Jocelyn Markowitz was unjustly enriched?

8                   \$ 1,824,028.019                   *Proceed to Question 18.*10       18. Did SKAT prove by a preponderance of the evidence that equity and good conscience do not permit  
11       the Calypso Investments Pension Plan to retain the money it received from SKAT?12                   Yes                    No \_\_\_\_\_13                   *If you answered "Yes" to Question 18, proceed to Question 19. If you answered "No" to  
14       Question 18, skip Question 19 and proceed to Question 20.*

15       19. In what amount do you find the Calypso Investments Pension Plan was unjustly enriched?

16                   \$ 1,824,028.0117                   *Proceed to Question 20.*18  
1920                   **SECTION III.     John van Merkenstein & Associated Plans**21                   **Subsection A. Fraud Claims**22       20. For the plans listed in Chart B, did SKAT prove that John van Merkenstein made or caused to be made  
23       the false statements in the reclaim applications to SKAT?24       (a)    **By Clear and Convincing Evidence:**25                   Yes as to all    Yes as to some \_\_\_\_\_   Yes as to none \_\_\_\_\_26                   *If you answered "Yes as to all" for Question 20(a), skip Question 20(b) and proceed to  
27       Question 21. If you answered "Yes as to none" for Question 20(a), proceed to Question  
28       20(b). If and only if you answered "Yes as to some" for Question 20(a), in Column 20(A)  
29       of Chart B, check the box to the right of the name of the plan or plans which you find SKAT  
30       proved that John van Merkenstein made or caused to be made the false statements to SKAT  
31       in the reclaim applications of the plan or plans. Then proceed to Question 20(b).*32       (b)    **By a Preponderance of the Evidence:**

33                   Yes as to all \_\_\_\_\_   Yes as to some \_\_\_\_\_   Yes as to none \_\_\_\_\_

1      *If you answered "Yes as to all" or "Yes as to none" for Question 20(b), proceed to*  
 2      *Question 21. If and only if you answered "Yes as to some" to Question 20(b), in Column*  
 3      *20(B) of Chart B, check the box to the right of the name of the plan or plans which you find*  
 4      *SKAT proved that John van Merkenstein made or caused to be made the false statements*  
 5      *to SKAT in the reclaim applications of the plan or plans. Then proceed to Question 21.*

6

### Chart B

John van Merkenstein Associated Plans	20(A)	20(B)
<i>Plans of which John van Merkenstein was a beneficiary</i>		
Basalt Ventures LLC Roth 401(K) Plan		
Bernina Pension Plan		
Omineca Pension Plan		
Starfish Capital Management LLC Roth 401(K) Plan		
Tarvos Pension Plan		
Voojo Productions LLC Roth 401(K) Plan		
Xiphias LLC Pension Plan		
Michelle Investments Pension Plan		
Remece Investments LLC Pension Plan		
<i>"Friends and Family" Plans</i>		
Battu Holdings LLC Roth 401K Plan		
Cantata Industries LLC Roth 401(K) Plan		
Crucible Ventures LLC Roth 401(K) Plan		
Dicot Technologies LLC Roth 401(K) Plan		
Fulcrum Productions LLC Roth 401(K) Plan		
Limelight Global Productions LLC Roth 401(K) Plan		
Pinax Holdings LLC Roth 401(K) Plan		
Plumrose Industries LLC Roth 401K Plan		
Raubritter LLC Pension Plan		
Sternway Logistics LLC Roth 401(K) Plan		
True Wind Investments LLC Roth 401(K) Plan		
Tumba Systems LLC Roth 401(K) Plan		
Vanderlee Technologies Pension Plan		
Monomer Industries LLC Roth 401(K) Plan		
2321 Capital Pension Plan		
Bowline Management Pension Plan		

California Catalog Company Pension Plan		
Clove Pension Plan		
Davin Investments Pension Plan		
Delvian LLC Pension Plan		
DFL Investments Pension Plan		
Laegeler Asset Management Pension Plan		
Lion Advisory Inc. Pension Plan		
Mill River Capital Management Pension Plan		
Next Level Pension Plan		
Rajan Investments LLC Pension Plan		
Spirit on the Water Pension Plan		
Tradén Investments Pension Plan		

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2     21. Did SKAT prove that John van Merkenstein knew, at the time the statements were made, that the  
 3     statements in all the reclaim applications of the plans listed in Chart B were false or that he acted  
 4     recklessly without regard to whether they were true or false?

5     (a)    **By Clear and Convincing Evidence:** Yes  No \_\_\_\_\_

6     *If you answered "Yes" to all of Questions 1(a), 20(a) as to All Plans, and 21(a) (i.e., you  
 7     found that SKAT proved by clear and convincing evidence that SKAT justifiably relied on  
 8     the false statements, that John van Merkenstein made or caused to be made the false  
 9     statements for all the listed plans in Chart B, and that John van Merkenstein, when the  
 10    statements were made, knew that the statements were false or acted recklessly without  
 11    regard to whether they were true or false), skip Questions 21(a)(i), 21(b), 22 and 23 (under  
 12    Subsection B) and proceed to Question 24 (under Subsection C). If you answered "Yes" to  
 13    Question 21(a) but not all three of the questions mentioned, skip only Questions 21(a)(i)  
 14    and 21(b) and proceed to Question 22.*

15    *If you answered "No" to Question 21(a), answer Question 21(a)(i), and then proceed to  
 16    Question 21(b), regardless of your answer.*

17    (i)    Did SKAT prove by clear and convincing evidence that John van Merkenstein  
 18    knew the statements in the reclaim applications were false or acted recklessly  
 19    without regard to whether they were true or false, at any time before the last reclaim  
 20    applications were submitted? Yes \_\_\_\_\_ No \_\_\_\_\_

21    If you answered "Yes" to Question 21(a)(i), indicate the first month and year:  
 22    \_\_\_\_\_

23    (b)    **By a Preponderance of the Evidence:** Yes \_\_\_\_\_ No \_\_\_\_\_

24    *If you answered "Yes" to Question 21(b), proceed to Question 22.*

1           *If you answered "No" to Question 21(b), answer Question 21(b)(i), and then proceed to*  
2           *Question 22, regardless of your answer.*

3           (i)    Did SKAT prove by a preponderance of the evidence that John van Merkenstein  
4           knew the statements in the reclaim applications were false or acted recklessly  
5           without regard to whether they were true or false, at any time before the last reclaim  
6           applications were submitted? Yes \_\_\_\_\_ No \_\_\_\_\_

7           If you answered "Yes" to Question 21(b)(i), indicate the first month and year:  
8           \_\_\_\_\_

9

10           **Subsection B. Aiding and Abetting Fraud Claims**

11          22. Did SKAT prove that, from the time the first reclaim application was submitted, John van Merkenstein  
12          knew or consciously avoided knowing that refund claims arranged by Sanjay Shah and Solo Capital  
13          were fraudulent?

14          (a)    **By Clear and Convincing Evidence:** Yes \_\_\_\_\_ No \_\_\_\_\_

15          *If you answered "Yes" to Question 22(a), skip Questions 22(a)(i) and 22(b), and continue*  
16          *to Question 23.*

17          *If you answered "No" to Question 22(a), answer Question 22(a)(i), and then proceed to*  
18          *Question 22(b), regardless of your answer.*

19          (i)    Did SKAT prove by clear and convincing evidence that John van Merkenstein  
20          knew or consciously avoided knowing, at any time before the final reclaim  
21          applications were submitted, that the refund claims arranged by Sanjay Shah and  
22          Solo Capital were fraudulent? Yes \_\_\_\_\_ No \_\_\_\_\_

23          If you answered "Yes" to Question 22(a)(i), indicate the earliest month and year:  
24          \_\_\_\_\_

25          (b)    **By a Preponderance of the Evidence:** Yes \_\_\_\_\_ No \_\_\_\_\_

26          *If you answered "Yes" to Question 22(b), then proceed to Question 23.*

27          *If you answered "No" to Question 22(b), answer Question 22(b)(i).*

28          (i)    Did SKAT prove by a preponderance of the evidence that John van Merkenstein  
29          knew or consciously avoided knowing, at any time before the final reclaim  
30          applications were submitted, that the refund claims arranged by Sanjay Shah and  
31          Solo Capital were fraudulent? Yes \_\_\_\_\_ No \_\_\_\_\_

32          *If you answered "No" to Question 22(b)(i), skip Question 23 and proceed to*  
33          *Question 24. If you answered "Yes" to Question 22(b)(i), indicate the date below,*  
34          *and proceed to Question 23.*

35          If you answered "Yes" to Question 22(b)(i), indicate the earliest month and year:  
36          \_\_\_\_\_

1

2 23. Did SKAT prove that John van Merkensteijn provided substantial assistance in the submission of  
3 fraudulent reclaim applications?

4 (a) **By Clear and Convincing Evidence:** Yes \_\_\_\_\_ No \_\_\_\_\_

5 *If you answered "Yes" to Question 23(a), skip Question 23(b), and proceed to Question*  
6 *24. If you answered "No" to Question 23(a), proceed to Question 23(b).*

7 (b) **By a Preponderance of the Evidence:** Yes \_\_\_\_\_ No \_\_\_\_\_

8 *Regardless of your answer to Question 23(b), proceed to Question 24.*

9

#### 10 **Subsection C. Negligent Misrepresentation Claims**

11 24. Did SKAT prove by a preponderance of the evidence that John van Merkensteijn failed to use  
12 reasonable care to ensure that the statements in every reclaim application of the plans listed in Chart B  
13 were correct?

14 Yes ✓ No \_\_\_\_\_

15 *If you answered "Yes" to Question 24, proceed to Question 25.*

16 *If you answered "No" to Question 24, answer 24(a), and then proceed to Question 25.*

17 (a) Did SKAT prove by a preponderance of the evidence that John van Merkensteijn, after a  
18 certain point in time, failed to use reasonable care to ensure that the statements in the  
19 reclaim applications were correct? Yes \_\_\_\_\_ No \_\_\_\_\_

20 If you answered "Yes" to Question 24(a), indicate the earliest month and year:  
21 \_\_\_\_\_

22

#### 23 **Subsection D. Unjust Enrichment/Money Had & Received/Payment by Mistake Claims**

24 25. Did SKAT prove by a preponderance of the evidence that equity and good conscience do not permit  
John van Merkensteijn to retain the money he received from SKAT?

26 Yes ✓ No \_\_\_\_\_

27 *If you answered "Yes" to Question 25, proceed to Question 26. If you answered "No" to*  
28 *Question 25, skip Question 26 and proceed to Question 27.*

29 26. In what dollar amount do you find John van Merkensteijn was unjustly enriched?

30 \$ 36,812,386.51

31 *Proceed to Question 27.*

1 27. Did SKAT prove by a preponderance of the evidence that equity and good conscience do not permit  
 2 the plans in which John van Merkenstein was a beneficiary (listed in the chart below) to retain the  
 3 money they received from SKAT?

4 Yes  No \_\_\_\_\_

5 *If you answered "Yes" to Question 27 proceed to Question 28. If you answered "No" to  
 6 Question 27, skip Question 28 and proceed to Question 29.*

7 28. In what dollar amount do you find each of these plans, of which John van Merkenstein was a  
 8 beneficiary, was unjustly enriched?

Pension Plans of which John van Merkenstein was a beneficiary	\$
Basalt Ventures LLC Roth 401(K) Plan	912,900
Bernina Pension Plan	3,127,768
Omineca Pension Plan	3,503,280
Starfish Capital Management LLC Roth 401(K) Plan	30,376
Tarvos Pension Plan	1,994,645
Voojo Productions LLC Roth 401(K) Plan	1,648,805
Xiphias LLC Pension Plan	3,788,351
Michelle Investments Pension Plan	4,035,308
Remece Investments LLC Pension Plan	3,154,895

9

10 *Proceed to Question 29.*

11

12 **SECTION IV. Elizabeth van Merkenstein & the Azalea Pension Plan**

13 **Subsection A. Fraud Claims**

14 29. Did SKAT prove that Elizabeth van Merkenstein made or caused to be made the false statements in  
 15 the Azalea Pension Plan's reclaim applications to SKAT?

16 (a) **By Clear and Convincing Evidence:** Yes  No \_\_\_\_\_

17 *If you answered "Yes" to Question 29(a), skip Question 29(b), and proceed to Question  
 18 30. If you answered "No" to Question 29(a), proceed to Question 29(b)*

19 (b) **By a Preponderance of the Evidence:** Yes \_\_\_\_\_ No \_\_\_\_\_

20 *Regardless of your answer to Question 29(b), proceed to Question 30.*

21

1 30. Did SKAT prove that Elizabeth van Merkensteijn knew, at the time the statements were made, that the  
2 statements in all the reclaim applications of the Azalea Pension Plan were false or that she acted  
3 recklessly without regard to whether they were true or false?

4 (a) **By Clear and Convincing Evidence:** Yes  No \_\_\_\_\_

5 *If you answered "Yes" to Questions 1(a), 29(a), and 30(a) (i.e., you found that SKAT  
6 proved by clear and convincing evidence that SKAT justifiably relied on the false  
7 statements, that Elizabeth van Merkensteijn made or caused to be made the false  
8 statements, and that Elizabeth van Merkensteijn knew, at the time the statements were  
9 made, that the statements were false or acted recklessly without regard to whether they  
10 were true or false), then skip Questions 30(a)(i), 30(b), 31, and 32 (under Subsection B),  
11 and proceed to Question 33 (under Subsection C). If you answered "Yes" to Question  
12 30(a) but not all three of the questions mentioned, skip only Questions 30(a)(i) 30(b) and  
13 proceed to Question 31.*

14 *If you answered "No" to Question 30(a), answer Question 30(a)(i), and then proceed to  
15 Question 30(b), regardless of your answer.*

16 (i) Did SKAT prove by clear and convincing evidence that Elizabeth van  
17 Merkensteijn knew the statements in the reclaim applications were false or acted  
18 recklessly without regard to whether they were true or false, at any time before the  
19 last reclaim applications were submitted? Yes \_\_\_\_\_ No \_\_\_\_\_

20 If you answered "Yes" to Question 30(a)(i), indicate the first month and year:  
21 \_\_\_\_\_

22 (b) **By a Preponderance of the Evidence:** Yes \_\_\_\_\_ No \_\_\_\_\_

23 *If you answered "Yes" to Question 30(b), proceed to Question 31.*

24 *If you answered "No" to Question 30(b), answer Question 30(b)(i), and then proceed to  
25 Question 31, regardless of your answer.*

26 (i) Did SKAT prove by a preponderance of the evidence that Elizabeth van  
27 Merkensteijn knew the statements in the reclaim applications were false or acted  
28 recklessly without regard to whether they were true or false, at any time before the  
29 last reclaim applications were submitted? Yes \_\_\_\_\_ No \_\_\_\_\_

30 If you answered "Yes" to Question 30(b)(i), indicate the first month and year:  
31 \_\_\_\_\_

32

33

34

35

36

### **Subsection B. Aiding and Abetting Fraud Claims**

2 31. Did SKAT prove that, from the time the first reclaim applications, Elizabeth van Merkensteyn knew or  
3 consciously avoided knowing that the refund claims arranged by Sanjay Shah and Solo Capital were  
4 fraudulent?

5 (a) By Clear and Convincing Evidence: Yes \_\_\_\_\_ No \_\_\_\_\_

6                   If you answered "Yes" to Question 31(a), skip Questions 31(a)(i) and 31(b), and continue  
7                   to Question 32.

If you answered "No" to Question 31(a), answer Question 31(a)(i), and then proceed to Question 31(b), regardless of your answer.

10 (i) Did SKAT prove by clear and convincing evidence that Elizabeth van  
11 Merkenstein knew or consciously avoided knowing, at any time before the final  
12 reclaim applications were submitted, that the refund claims arranged by Sanjay  
13 Shah and Solo Capital were fraudulent? Yes \_\_\_\_\_ No \_\_\_\_\_

14 If you answered “Yes” to Question 31(a)(i), indicate the earliest month and year:  
15

16 (b) By a Preponderance of the Evidence: Yes \_\_\_\_\_ No \_\_\_\_\_

17                    *If you answered “Yes” to Question 31(b), proceed to Question 32*

18                    *If you answered "No" to Question 31(b), answer Question 31(b)(i).*

19 (i) Did SKAT prove by a preponderance of the evidence that Elizabeth van  
20 Merkensteijn knew or consciously avoided knowing, at any time before the final  
21 reclaim applications were submitted, that the refund claims arranged by Sanjay  
22 Shah and Solo Capital were fraudulent? Yes \_\_\_\_\_ No \_\_\_\_\_

23                   *If you answered “No” to Question 31(b)(i), skip Question 32 and proceed to*  
24                   *Question 33. If you answered “Yes” to Question 31(b)(i), indicate the date below,*  
25                   *and proceed to Question 32.*

26 If you answered “Yes” to Question 31(b)(i), indicate the earliest month and year:  
27

28 32. Did SKAT prove that Elizabeth van Merkensteyn provided substantial assistance in the submission of  
29 fraudulent reclaim applications?

30 (a) By Clear and Convincing Evidence: Yes \_\_\_\_\_ No \_\_\_\_\_

If you answered "Yes" to Question 32(a), skip Question 32(b) and proceed to Question 33.  
If you answered "No" to Question 32(a), proceed to Question 32(b).

33 (b) By a Preponderance of the Evidence: Yes \_\_\_\_\_ No \_\_\_\_\_

34 *Regardless of your answer to Question 32(b), proceed to Question 33.*

1

2 **Subsection C. Negligent Misrepresentation Claims**

3 33. Did SKAT prove by a preponderance of the evidence that Elizabeth van Merkenstein failed to use  
4 reasonable care to ensure that the statements in every reclaim application of the Azalea Pension Plan  
5 were correct?

6 Yes  No \_\_\_\_\_

7 If you answered "Yes" to Question 33, proceed to Question 34.

8 If you answered "No" to Question 33, answer 33(a), and then proceed to Question 34.

9 (a) Did SKAT prove by a preponderance of the evidence that Elizabeth van Merkenstein,  
10 after a certain point in time, failed to use reasonable care to ensure that the statements in  
11 the reclaim applications were correct? Yes \_\_\_\_\_ No \_\_\_\_\_

12 If you answered "Yes" to Question 33(a), indicate the earliest month and year:  
13 \_\_\_\_\_

14

15 **Subsection D. Unjust Enrichment/Money Had & Received/Payment by Mistake Claims**

16 34. Did SKAT prove by a preponderance of the evidence that equity and good conscience do not permit  
17 Elizabeth van Merkenstein to retain the money she received from SKAT?

18 Yes  No \_\_\_\_\_

19 If you answered "Yes" to Question 34, proceed to Question 35. If you answered "No" to  
20 Question 34, skip Question 35 and proceed to Question 36.

21 35. In what dollar amount do you find Elizabeth van Merkenstein was unjustly enriched?

22 \$ 1,866,667.14

23 Proceed to Question 36.

24 36. Did SKAT prove by a preponderance of the evidence that equity and good conscience do not permit  
25 the Azalea Pension Plan to retain the money it received from SKAT?

26 Yes  No \_\_\_\_\_

27 If you answered "Yes" to Question 36, proceed to Question 37. If you answered "No" to  
28 Question 36, skip Question 37 and proceed to Part Three.

29 37. In what dollar amount do you find the Azalea Pension Plan was unjustly enriched?

30 \$ 1,866,667.14

31

*Regardless of your answers to any questions in Part One or Two, proceed to Part Three, and follow the instructions listed there.*

## PART THREE

## 1. Statute of Limitations

8     *Answer Questions 38(a), 38(b), and 38(c) unless you answered “No” to both Questions 1(a) and 1(b),*  
9     *and you answered “No” to all questions under Subsection D of Sections I, II, III, and IV. If you*  
10    *answered “No” to all of those questions, proceed to Question 42.*

11 38.

(a) Have the Defendants proven by a preponderance of the evidence that SKAT knew or should have known before January 1, 2015, of all its then-available claims against that Defendant for fraud, aiding and abetting fraud, and negligent misrepresentation?

15 Richard Markowitz Yes  No  X

16 Jocelyn Markowitz Yes No

17 Markowitz-Affiliated Pension Plans Yes  No

18 John Van Merkenstijn Yes  No

19 Elizabeth Van Merkenstijn Yes  No

20 Van Merkenstein-Affiliated Pension Plans Yes  No  X

(b) Have the Defendants proven by a preponderance of the evidence that SKAT knew or should have known before January 1, 2015, of all its then-available claims against that Defendant for unjust enrichment?

24 Richard Markowitz Yes  No

25 Jocelyn Markowitz Yes  No

26 Markowitz-Affiliated Pension Plans Yes  No

27 John Van Merkenstijn Yes  No

28 Elizabeth Van Merkenstijn Yes  No  X

29 Van Merkensteijn-Affiliated Pension Plans Yes  No

(c) Have the Defendants proven by a preponderance of the evidence that Plaintiff knew or should have known before November 19, 2016 of all of its then-available claims against John van Merkenstein, Richard Markowitz, Bernina Pension Plan Trust, and RJM Capital Pension Plan Trust in connection with 2321 Capital Pension Plan, Bowline Management Pension Plan, California Catalog Company Pension Plan, Clove Pension Plan, Davin

1 Investments Pension Plan, DFL Investments Pension Plan, Laegeler Asset Management  
 2 Pension Plan, Lion Advisory Inc. Pension Plan, Mill River Capital Management Pension  
 3 Plan, Next Level Pension Plan, Rajan Investments LLC Pension Plan, Spirit on the Water  
 4 Pension Plan, and Traden Investments Pension Plan?

5 Yes \_\_\_\_\_ No

6 *If you answered "Yes" to Question 6, 15, 24, or 33 (under Subsection C), answer Question 39. If you*  
 7 *answered "No" to all four of those questions, skip Questions 39, 40, and 41, and proceed to Question*  
 8 *42.*

9 **2. Comparative Fault**

10 *Only answer Questions 39, 40, and 41 if you answered "Yes" to Question 6, 15, 24, or 33 (under*  
 11 *Subsection C).*

12 39. Have the Defendants proven by a preponderance of the evidence that SKAT was negligent in making  
 13 refund payments to Defendants' pension plans?

14 Yes \_\_\_\_\_ No

15 *If you answered "Yes" to Question 39, proceed to Question 40. If you answered "No" to*  
 16 *Question 39, skip Questions 40 and 41, and proceed to Question 42.*

17 40. Have the Defendants proven by a preponderance of the evidence that SKAT's negligence was a  
 18 substantial factor in bringing about its own injuries?

19 Yes \_\_\_\_\_ No \_\_\_\_\_

20 *If you answered "Yes" to Question 40, proceed to Question 41. If you answered "No" to*  
 21 *Question 40, skip Question 41 and proceed to Question 42.*

22 41. Indicate the percentage of fault of SKAT, Solo/Sanjay Shah, and each Defendant:

23 SKAT \_\_\_\_\_ %

24 Solo/Shah \_\_\_\_\_ %

25 Richard Markowitz \_\_\_\_\_ %

26 Jocelyn Markowitz \_\_\_\_\_ %

27 John Van Merkensteijn \_\_\_\_\_ %

28 Elizabeth Van Merkensteijn \_\_\_\_\_ %

29 Robert Klugman \_\_\_\_\_ %

30 Total \_\_\_\_\_ %

31 (Total Must Equal 100)

1        *Proceed to Question 42.*

2        **3. New York General Obligations Law § 15-108**

3        42. For the trading that took place on behalf of each of the plans at issue in this case, during the period of  
4        2012 to 2015, indicate the percentage of fault for SKAT's injury for each of the following individuals:

5	Solo/Shah	<u>51</u> %
6	Richard Markowitz	<u>15</u> %
7	John Van Merkensteijn	<u>15</u> %
8	Jerome Lhote	<u>6</u> %
9	Matthew Stein	<u>6</u> %
10	Michael Ben-Jacob	<u>1</u> %
11	Robert Klugman	<u>6</u> %
12	<i>Total</i>	<u>100</u> %

13        (Total Must Equal 100)

14  
15  
16  
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21